



U. S. Department of Justice

Civil Division

Assistant Attorney General

Washington, D.C. 20530

May 24, 2010

Frank A. Piccolo, Esquire
Wesleyan Tower
24 Greenway Plaza, Suite 2050
Houston, Texas 77046

Re: *In Re Complaint and Petition of Triton Asset Leasing GmbH, Transocean Holdings LLC, et al., as Owner, etc., of MODU Deepwater Horizon*
USDC, SDTX, Civ. No. 10-CV-1721-KPE

Dear Mr. Piccolo:

We have reviewed the petition for limitation of liability filed on behalf of your clients, whom we understand to be various entities associated with the ownership and operation of the *MODU Deepwater Horizon*. From the face of the petition, it appears your clients seek to invoke the Limitation of Liability Act of 1851, 46 U.S.C. § 30501 *et seq.*, in order wholly to absolve ("exonerate") themselves of liability for the *Deepwater Horizon* tragedy and spill or, in the alternative, limit their liability to approximately \$27 million.

We are of course well aware of the history of the Limitation Act, including perhaps its most infamous invocation, the action by the owners of the SS TITANIC to exonerate themselves from liability to the ship's survivors and the estates of those killed when the vessel sank. It is simply unconscionable, in the circumstances of this case, that Transocean is attempting to use this same shield of liability, potentially leaving thousands of people who have been damaged by your clients' actions with no remedy. To add insult to injury, it appears that Transocean has recently decided to issue approximately \$1 billion in dividends to its shareholders.

We write here to address the petition's assertion that the claims of the United States and several States are subject to exoneration or limitation under the Limitation Act and/or Rule F of the Supplemental Rules for Admiralty and Maritime Claims ("Supplemental Rule F").

We presume that your clients are well aware that Congress repealed the Limitation Act in oil spill cases subject to the scope of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2701

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et seq. Lest there be any doubt, we refer you to cases directly on point, including the First and Eleventh Circuit decisions in *MetLife Capital Corp. v. M/V EMILY S.*, 132 F.3d 818, 824 (1st Cir.1997), *cert. denied*, 524 U.S. 952 (1998), and *Bouchard Transportation Co. v. Environmental Protection Agency*, 147 F.3d 1344, 1349, 1352 (11th Cir. 1998), *cert. denied*, 525 U.S. 1140, and *cert. denied*, 525 U.S. 1171 (1999). See also *Tug Allie-B, Inc. v. United States*, 273 F.3d 936, 948 (11th Cir. 2001) (holding the Limitation Act of 1851 inapplicable to the Park System Resource Protection Act ("PSRPA"), 16 U.S.C. § 19jj *et seq.* and the National Marine Sanctuaries Act ("NMSA"), 16 U.S.C. § 1443(a)(4)). And we assume that you and your clients are fully aware that *Bouchard* also made clear that OPA precludes application of the Limitation Act and Supplemental Rule F *vis-a-vis* oil spill claims of state sovereigns, as well as claims of the United States.

We also direct your attention to OPA's legislative history, quoted as follows in *MetLife*, 132 F.3d at 822:

In considering the OPA's liability provision, Congress stated:

"Liability under this Act is established notwithstanding any other provision or rule of the law. This means that the liability provisions of this Act would govern limitations compensation for removal costs and damages notwithstanding any limitations under existing statutes such as the act of March 3, 1851"

H.R. Conf. Rep. No. 101-653, at 103 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 781 (Joint Explanatory Statement of the Conference Committee explaining [33 U.S.C.] § 2702(a)). Furthermore, the Senate Report on the OPA bill asserts that the OPA "completely supersedes the 1851 statute with respect to oil pollution." S. Rep. No. 101-94, at 14, *reprinted in* 1990 U.S.C.C.A.N. 722, 736.

Given the foregoing, we ask that you agree to modify the court's monition to the extent that it could be construed to cover the claims of the United States or the States. We further ask that you provide your response in writing within ten business days of receiving this letter. We also ask that, should you decline our offer of a prompt and amicable resolution of these concerns, you provide in your letter whatever case law and arguments, if any, you believe might support your position.

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We thank you for your attention and consideration and look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tony West', with a long horizontal line extending to the right.

Tony West
Assistant Attorney General

cc: Ignacia Moreno
Assistant Attorney General, Environment
and Natural Resource Division
U.S. Department of Justice
Fax: (202) 514-2701

Troy King
Office of the Attorney General
State of Alabama
500 Dexter Avenue
Montgomery, AL 36104-3718
Fax: (334) 242-4891

James D. Caldwell
Office of the Attorney General
State of Louisiana
1885 N. Third Street
Baton Rouge, LA 70802
Fax: (225) 326-6000

Bill McCollum
Office of Attorney General
State of Florida
The Capitol PL-01
Tallahassee, FL 32399-1050
Fax: (850) 488-5106

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cc: (continued)

Jim Hood
Office of the Attorney General
State of Mississippi
Walter Sillers Building
550 High Street, Suite 1200
Jackson, MS 39201
Fax: (601) 359-3680

Greg Abbott
Office of the Attorney General
State of Texas
300 W. 15th Street
Austin, TX 78701
Fax: (512) 475-2994